

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: IMPLEMENTATION OF THE FEDERAL COMMUNICATIONS COMMISSION'S TRIENNIAL REVIEW ORDER ADOPTING NEW RULES FOR NETWORK UNBUNDLING OBLIGATIONS	DOCKET NO. INU-03-1
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ORDER GRANTING MOTION TO CLOSE DOCKET

(Issued August 10, 2004)

In an open meeting on February 20, 2003, the Federal Communications Commission (FCC) adopted rules concerning the obligations of incumbent local exchange carriers (ILECs) to make elements of their networks available on an unbundled basis. The FCC's written order was released on August 21, 2003, and published in the Federal Register on September 2, 2003, to be effective on October 3, 2003.¹ Prior to the release of the written order, the Board opened Docket No. INU-03-1 for the purpose of making the determinations the FCC delegated to State Commissions.

On March 2, 2004, the United States Court of Appeals for the District of Columbia issued its decision in *United States Telecom Association v. FCC*, 359 F.3d 554 (D.C. Cir. 2004) (*USTA II*) holding that the FCC did not have authority to

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98, 98-147, "Report and Order on Remand and Further Notice of Proposed Rulemaking," FCC 03-36 (rel. Aug. 21, 2003) (Triennial Review Order or TRO).

delegate its responsibility to make the impairment determinations pursuant to 47 U.S.C. § 252(d)(2). The Court also vacated and remanded the FCC's nationwide impairment determinations with respect to these elements. The decision in *USTA II* became effective on June 16, 2004, when the Court issued its mandate.

On July 2, 2004, Qwest filed a motion to close this docket. Qwest argued that the issuance of *USTA II* made it clear that the docket should be closed.

On July 13, 2004, AT&T filed its objections to Qwest's motion. According to AT&T, it is premature to close the docket because any impairment analysis the FCC may undertake pursuant to the *USTA II* decision must continue to be granular, arguing that the FCC must look at Iowa-specific data before making any impairment decisions affecting Iowa. Additionally, AT&T argues that no party will be prejudiced by keeping this docket open and that the interests of various parties may be prejudiced if the docket is closed prematurely.

On July 27, 2004, Qwest replied to AT&T's objection, noting that the current record in this proceeding consists of testimony that is made up of approximately 90 percent argument about what the TRO means rather than any state-specific evidence that might be useful to the FCC. Qwest also points out that AT&T's own testimony used the same business case model in every state, thus arguing against the necessity of keeping this docket open in order to further any state-specific analysis. Qwest suggests that the best approach is to end this proceeding and initiate an appropriate proceeding only if it is necessary.

The Board's April 2, 2004, "Order Granting Stay of Proceedings and Motion to Withdraw Updated SGAT" stated the following rationale for staying the procedural schedule in Docket No. INU-03-1:

Qwest's request for stay is based on the Court's decision to vacate both the FCC's subdelegation to states as well as the FCC's nationwide impairment determinations. In the absence of delegated authority and national standards to apply, prudence would dictate that these labor- and time-intensive proceedings should be delayed pending further direction from the courts or the FCC. When the Court's decision becomes effective, the resources applied up to that point will have been wasted.

Since the time of that order, the Court's direction in *USTA II* has become effective and the FCC's delegation of authority to the Board to make any impairment determinations required by 47 U.S.C. § 251(d)(2) has been abrogated.

Although it is possible that the FCC could enter an order asking the states to collect certain information regarding impairment relating to some network elements, without specific direction from the FCC the precise nature of that hypothetical information request is unknown. In the absence of a specific request from the FCC, there appears to be no reason to keep the current docket open. Although AT&T argues that various parties may be prejudiced if the docket is closed prematurely, it did not provide any examples of how that might occur. If the FCC does issue an order in the future asking the Board to provide state-specific facts or recommendations, the Board can open a new docket to gather and analyze that information.

IT IS THEREFORE ORDERED:

Qwest Corporation's "Motion to Close Docket," filed July 2, 2004, is granted.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 10th day of August, 2004.